

**POLS 4331.001**  
**Fall 2023**

**U.S. Constitutional Law: Government Power**  
**Tuesdays and Thursdays 12:30-1:50PM**  
**Room: UH 02**

Instructor: Dr. Brent Boyea

Office: University Hall 446

E-mail: [boyea@uta.edu](mailto:boyea@uta.edu)

Website: <https://www.brentdboyea.com>

Faculty Profile: <https://www.uta.edu/profiles/brent-boyea>

Office Hours: Tuesday and Thursday, 11:15AM-12:00PM

Microsoft Teams link:

[https://teams.microsoft.com/l/team/19%3aQSGfwroweMo\\_Z9ThXT4UYSifJtIQNguWfVWQBDGsCVs1%40thread.tacv2/conversations?groupId=dcd6c883-a6d7-42b2-8cbb-84f34df6442d&tenantId=5cdc5b43-d7be-4caa-8173-729e3b0a62d9](https://teams.microsoft.com/l/team/19%3aQSGfwroweMo_Z9ThXT4UYSifJtIQNguWfVWQBDGsCVs1%40thread.tacv2/conversations?groupId=dcd6c883-a6d7-42b2-8cbb-84f34df6442d&tenantId=5cdc5b43-d7be-4caa-8173-729e3b0a62d9)

### **I. Introduction:**

The purpose of this course is to increase the student's understanding of U.S. constitutional law, the U.S. Supreme Court, and American judicial politics in general. This course explores how the U.S. Supreme Court has defined and resolved relationships among the three branches of the national government and between the national government and the states. Focusing on decisions of the U.S. Supreme Court that grant power or place limitations on government entities, the goal of this course is to understand the U.S. Supreme Court as a policy-making branch of the federal government by understanding the political nature of constitutional interpretation.

The courts are a unique branch of government, using legal reasoning as the foundation for policy and decisions. While unique, the courts remain highly political, settling disputes with high political consequences. To understand judicial decision-making and the political consequences of judicial policy, this course will introduce to and familiarize students with legal reasoning and constitutional interpretation. Throughout the semester we will examine the legal rationale that justifies many court decisions related to powers and constraints. Through this process, each student should learn to master this style of reasoning, learning to express themselves in a clear and concise manner, as well as learning how to analyze complex legal issues.

### **II. Course Modality**

Per university policy, this is an in-person course. We will meet Tuesdays and Thursdays in UH 02 unless noted in the schedule below. If the university changes classroom policies, I will adjust as necessary.

Though the course is in-person, a few classes will be online and asynchronous. Presentation modules for those classes are stored in Canvas. With each module, video and audio (generally found at the upper right corner of a slide) are embedded in the files. To view and listen to the media content, students must download the file from Canvas and open in Microsoft PowerPoint or Keynote. Where students attempt to review in Canvas, neither video nor audio will be accessible and important points will be missed. Modules will be available after completion of the prior class.

### **III. Required Textbooks:**

There are two required textbooks. If purchasing online, use expedited shipping as readings will begin immediately.

1. Lee Epstein, Kevin T. McGuire, and Thomas G. Walker. 2023. (11<sup>th</sup> Edition). *Constitutional Law for a Changing America: Institutional Powers and Constraints*. Washington, D.C.: CQ Press. (ISBN – paperback 9781071822128 or e-version 9781071822142)
2. Biskupic, Joan. 2023. *Nine Black Robes: Inside the Supreme Court's Drive to the Right and Its Historic Consequences*. New York: William Morrow. (ISBN – hardcover 9780063052789 or e-version 9780063052802)
3. Prepared Articles on Canvas. To access Canvas, visit <https://www.uta.edu/provost/Canvas/uta-canvas-login.php> or contact the Office of Information Technology Help Desk at 817-272-2208.

Let me emphasize that it is extremely important that students do not fall behind in their readings. With the substantial amount of weekly material, students will find themselves overwhelmed if they do not keep up.

#### IV. Course Requirements:

1. Class Participation – Students are expected to attend each class prepared to discuss the day's readings. While I do not grade attendance, failure to attend class will have a direct negative result on your participation grade (10% of the course grade). I expect thoughtful participation with activity reflecting student engagement and careful thinking about the day's readings. Students will be called upon during class. Answers to questions will require preparation and readiness. One answer pass will be given during the semester; afterwards, deductions of twenty (20) percentage points will be made from the participation grade where students have not responded sufficiently or are not present to answer.
2. Quizzes – Students will take five quizzes, which will be run through Canvas outside of class time. Each quiz will consist of five multiple choice questions based on the cases and textbook readings. Each quiz will be equal to 5% of the course grade with the lowest score dropped (4 x 5% = 20%). Quiz dates and times will be announced in class or on Canvas. Failure to take a quiz will result in a grade of zero. It is important that students use a wired or strong wireless connection to avoid having their quiz stopped prematurely. There are *no* make-up opportunities for missed quizzes regardless of the reason, including where access stopped due to a poor wireless connection. Use of AI software (like ChatGPT) is strictly forbidden. Confirmed or suspected use of AI software is considered academic dishonesty in this course and violations will be submitted to UTA's Office of Community Standards. All forms of academic dishonesty (see section XI.3.) will lead to a grade of zero for an assignment, examination, or quiz.
3. Examinations – There will be two midterm examinations and one final examination with each administered in our classroom. Both midterm exams are worth 20% of the course grade and the final exam is equal to 30% of the course grade. The examinations will be essay and short answer format. Students are required to purchase and bring a bluebook to each exam. Bluebooks can be purchased at the university's bookstore. The first mid-term exam is scheduled on October 3<sup>rd</sup> and the second midterm exam is scheduled on November 9<sup>th</sup>. The final examination will take place on December 12<sup>th</sup> from 11AM-1:30PM. All students will take the examinations at the designated times with no make-up examinations allowed except when caused by a medical emergency or a death in one's family. With exam absences due to a medical emergency, students must contact me during the day of the exam and are required to provide proof of a physician's examination. Failure to take an examination will result in a grade of zero.  
Examinations for this course will be challenging exercises where prepared students should have an easier time. This is not designed to be an easy course. Where students have not regularly attended classes or failed to participate, they should expect to struggle with the exams. The more students know about the cases studied, the better they should expect to perform.

*Make-up Examination Policy*

Where make-up exams are permitted, those examinations will be scheduled at an agreed upon time and will be proctored on campus by the Department of Political Science. Make-up exams are generally more difficult due to the time that has passed since the graded material was covered. An additional disadvantage relates to the extra points sometimes added to the regular exam, since they are never applied to a make-up exam.

*Exam Tardiness Policy*

Students entering late disturb other students. Further, tardiness permits students to ask other exiting students about the content of an exam – that is not fair to students that have arrived on time. Unless a prior arrangement has been made, students will receive a grade of zero when tardy for an exam. There will be no make-up exams where students are late to the scheduled exam.

**V. Grading:**

Grades will be posted on Canvas. To access the quizzes, examinations, and other grades in Canvas, log in with your UTA email address and password at [uta.instructure.com](http://uta.instructure.com). If you have difficulty with Canvas, visit <https://www.uta.edu/provost//Canvas/uta-canvas-login.php> or contact the Office of Information Technology Help Desk at 817-272-2208. The grade components of the course are:

- 1. Participation – 10%
- 2. Readings Quizzes – 20%
- 3. Midterm Examination #1 – 20%
- 4. Midterm Examination #2 – 20%
- 5. Final Examination – 30%

The grading scale is as follows:

90-100	A
80-89	B
70-79	C
60-69	D
0-59	F

**VI. Class Schedule:**

August 22 Introduction to the Course

August 24 Judicial Selection and the U.S. Constitution

Assignment: Prior to class, read pp. 1-24 in Epstein, McGuire, and Walker;  
Weekly assignment: Read pp. xi-11 in Biskupic (Author’s Note and Prologue)

August 29 The U.S. Constitution cont.

Assignment: Prior to class, read pp. 24-46 and 659-670 in Epstein, McGuire, and Walker  
Weekly assignment: Read pp. 13-75 in Biskupic (Chapter 1-2)

August 31 The U.S. Constitution cont.

Assignment: Prior to class, read pp. 49-60 in Epstein, McGuire, and Walker;  
“Samuel Alito, the Supreme Court’s Plain-Spoken Defender” by David Rivkin, Jr. and James Taranto in *Wall Street Journal* (July 28, 2023) in Assignments in Canvas

September 5 Judicial Review  
*Marbury v. Madison* (1803)  
*Eakin v. Raub* (1825)

Assignment: Prior to class, read pp. 61-72 and 76-83 in Epstein, McGuire, and Walker;  
Weekly assignment: Read pp. 76-128 in Biskupic (Chapters 3-4)

September 7 Constraints on Judicial Authority  
*Ex parte McCordle* (1869)  
*Patchak v. Zinke* (2018)  
*Baker v. Carr* (1962)  
*Nixon v. United States* (1993)  
*Flast v. Cohen* (1968)

Assignment: Prior to class, read pp. 83-114 in Epstein, McGuire, and Walker

September 12 Legislative Authority – Membership and Institutional Independence, Sources and Scope  
*Powell v. McCormack* (1969)  
*U.S. Term Limits, Inc v. Thornton* (1995)  
*Gravel v. United States* (1972)  
*McCulloch v. Maryland* (1819)

Assignment: Prior to class, read pp. 117-149 in Epstein, McGuire, and Walker;  
Weekly assignment: Read pp. 129-181 in Biskupic (Chapters 5-6)

September 14 **Asynchronous Class – In Canvas’ Modules Page**  
Legislative Authority – Enumerated, Implied, & Inherent Powers  
*McGrain v. Daugherty* (1927)  
*Watkins v. United States* (1957)  
*Barenblatt v. United States* (1959)  
*Trump v. Mazars USA, LLP* (2020)  
*South Carolina v. Katzenbach* (1966)

Assignment: Prior to class, read pp. 149-175 in Epstein and Walker

September 15 Constitution Day speaker – Dr. Jim Riddlesperger (Texas Christian University)  
2:00-3:00PM Attendance is strongly recommended, location to be announced

September 19 Presidential Selection and Contours of Presidential Power  
*Bush v. Gore* (2000)  
*In Re Neagle* (1890)  
*Clinton v. City of New York* (1998)

Assignment: Prior to class, read pp. 177-205 in Epstein, McGuire, and Walker;

Weekly assignment: Read pp. 182-236 in Biskupic (Chapters 7-8)

- September 21 Executive Powers – Power of Appointment and Removal and Executive Privilege  
*Morrison v. Olson (1988)*  
*NLRB v. Canning (2014)*  
*United States v. Nixon (1974)*

Assignment: Prior to class, read pp. 205-212 and 220-226 in Epstein, McGuire, and Walker

- September 26 Executive Powers – Presidential Immunity  
*Mississippi v. Johnson (1867)*  
*Clinton v. Jones (1997)*  
*Trump v. Vance (2020)*

Assignment: Prior to class, read pp. 226-238 in Epstein, McGuire, and Walker;  
Weekly assignment: Read pp. 237-276 in Biskupic (Chapters 9-10)

- September 28 The Pardon Power and President in Foreign Policy; Midterm Examination #1 Review  
*Ex parte Grossman (1925)*  
*Murphy v. Ford (1975)*

Assignment: Prior to class, read pp. 238-245 in Epstein, McGuire, and Walker;

- October 3 Midterm Examination #1

October 5 **Asynchronous Class – In Canvas' Modules Page**

Separation of Powers – Domestic Powers  
*Gundy v. United States (2019)*  
*Immigration and Naturalization Service v. Chadha (1983)*  
*Bowsher v. Synar (1986)*

Assignment: Prior to class, read pp. 247-265 in Epstein, McGuire, and Walker  
Weekly assignment: Read pp. 277-300 in Biskupic (Chapter 11)

- October 10 Separation of Powers – War Powers and Foreign Affairs  
*The Prize Cases (1863)*  
*Ex parte Milligan (1866)*  
*Korematsu v. United States (1944)*

Assignment: Prior to class, read pp. 265-283 in Epstein, McGuire, and Walker;  
Weekly assignment: Read pp. 301-329 in Biskupic (Chapters 12 and Epilogue)

- October 12 Separation of Powers – War Powers and Foreign Affairs cont.  
*Youngstown Sheet & Tube Company v. Sawyer (1952)*  
*Dames & Moore v. Regan (1981)*  
*Zivotofsky v. Kerry (2015)*  
*Hamdi v. Rumsfeld (2004)*

Assignment: Prior to class, read pp. 283-306 in Epstein, McGuire, and Walker

- October 17 Federalism - Federal Power, State Sovereignty and the Reemergence of Dual Federalism  
*McCulloch v. Maryland (1819)*  
*Scott v. Sandford (1857)*  
*New York v. United States (1992)*  
*Printz v. United States (1997)*
- Assignment: Prior to class, read pp. 311-330, 334-336, 340-351, and 354 in Epstein, McGuire, and Walker
- October 19 The Commerce Power  
*Gibbons v. Ogden (1824)*
- Assignment: Prior to class, read pp. 375-381 in Epstein, McGuire, and Walker
- October 24 The Commerce Power – Defining Commerce during the Industrial Revolution  
*United States v. E.C. Knight (1895)*  
*Stafford v. Wallace (1922)*  
*Hammer v. Dagenhart (1918)*
- Assignment: Prior to class, read pp. 381-391 and 393-397 in Epstein, McGuire, and Walker
- October 26 The Commerce Power – The Supreme Court and the New Deal  
*A.L.A. Schechter Poultry Corp. v. United States (1935)*  
*NLRB v. Jones & Laughlin Steel Corp. (1937)*
- Assignment: Prior to class, read pp. 397-418 in Epstein, McGuire, and Walker
- October 31 Asynchronous Class – In Canvas' Modules Page**
- The Commerce Power – The New Deal Era and the Expansive Jurisprudence  
*United States v. Darby (1941)*  
*Wickard v. Filburn (1942)*  
*Heart of Atlanta Motel, Inc. v. United States (1964)*
- Assignment: Prior to class, read pp. 418-430 in Epstein, McGuire, and Walker
- November 2 The Commerce Power – The Republican Court Era  
*United States v. Lopez (1995)*  
*United States v. Morrison (2000)*  
*Gonzales v. Raich (2005)*  
*National Federation of Independent Business v. Sebelius (2012)*
- Assignment: Prior to class, read pp. 430-456 in Epstein, McGuire, and Walker
- November 7 Midterm Examination #2 Review
- November 9 Midterm Examination #2
- November 14 Taxing and Spending Authority  
*Pollack v. Farmers' Loan & Trust Co. (1895)*  
*McCray v. United States (1904)*

*Bailey v. Drexel Furniture (1922)*

Assignment: Prior to class, read pg. 477-486 and 496-503 in Epstein, McGuire, and Walker

- November 16 Taxing and Spending Authority cont. – The General Welfare Clause  
*United States v. Butler (1936)*  
*Steward Machine Co. v. Davis (1937)*  
*South Dakota v. Dole (1987)*  
*National Federation of Independent Business v. Sebelius (2012)*

Assignment: Prior to class, read pg. 503-521 in Epstein, McGuire, and Walker

**November 21 Asynchronous Class – In Canvas' Modules Page**

- Economic Substantive Due Process – Development of Substantive Due Process  
*The Slaughterhouse Cases (1873)*  
*Munn v. Illinois (1877)*  
*Allgeyer v. Louisiana (1897)*

Assignment: Prior to class, read pg. 541-543 and 573-589 in Epstein, McGuire, and Walker

- November 23 Thanksgiving Recess

- November 28 Economic Substantive Due Process cont. – Economic Liberty  
*Lochner v. New York (1905)*  
*Muller v. Oregon (1908)*  
*Adkins v. Children's Hospital (1923)*

Assignment: Prior to class, read pg. 589-603 in Epstein, McGuire, and Walker

- November 30 Economic Substantive Due Process cont. & the Takings Clause  
*Nebbia v. New York (1934)*  
*West Coast Hotel v. Parrish (1937)*  
*Berman v. Parker (1954)*  
*Kelo v. City of New London (2005)*

Assignment: Prior to class, read pg. 603-612, 621-624, and 641-650 in Epstein, McGuire, and Walker

- December 5 Final Examination Review

- December 12 Final Examination, 11:00AM-1:30PM

## **VII. Core Expectations and Citizenship**

### *Expectations of Students*

I have strong yet reasonable expectations for students. To perform well, students are expected to work - meaning a combination of recurrent attendance, frequent class participation, and careful attention to the readings is required. Students that do not attend class regularly, do not take careful class notes, and do not carefully read the assigned material will have a more difficult time with the exams. Additionally, I encourage students to see me during my office hours. Where questions arise about the content of the course or a

student's grade, office hours represent important opportunities for interaction between students and their instructor.

### *Citizenship*

While each student pays a significant cost to attend this course, sometimes an individual is less interested in learning, and disturbs others during class (i.e., talking, receiving or making phone calls, or text messaging). As a result of student complaints, use of cell phones during class will result in a two-point deduction from a student's final semester grade for each offense (one offense is a 2-point penalty, two offenses is a 4-point penalty, etc.). I reserve the right to ask the students to leave class when cell phone use is observed. Otherwise, do not walk in late, leave early, or push around others to find a seat once class has begun - it disturbs others! Be careful with laptop computers. Unfortunately, most students use their laptops to access the web for non-related material, play games or read email rather than paying attention to the lecture. Where I see a laptop being used, I assume that it is being used for something other than class purposes.

### *Communication*

The University has provided students with an official email address. All communication will be directed to you through that address, as well as announcements through Canvas. Students are responsible for checking their e-mail and Canvas regularly. Per university policy, I will not respond to non-university email addresses. Also, remember to formalize your emails by addressing the e-mail, providing a subject, and always signing your email. Note that one-line comments or questions are not enough for me to know what you are trying to say - be sure to provide enough detail about the context to allow a sufficient answer on my part.

## **VIII. Special Notes:**

1. Cell Phones and Electronic Devices – Students are instructed to turn off their cell phones prior to class. See the comments about cell phone usage in the Citizenship section. Usage of a cell phone or other non-permitted electronic device during an examination or quiz will result in a grade of zero on that examination or quiz.
2. Test Conduct – Examinations are closed book. Cell phones, textbooks, and open internet sites that are not Canvas are prohibited during examinations.
3. Academic Integrity - All students are expected to obey the civil and penal statutes of the State of Texas and the United States, the Regents' Rules and Regulations of The University of Texas System, the rules and regulations of the University, and the orders or instructions issued by an administrative official of the University or U.T. System in the course of his/her duties, and to observe standards of conduct that are compatible with the University's function as an educational institution. Any student found to engage in cheating, plagiarism, or collusion will be sanctioned.
4. Inclement Weather – If a class is canceled due to inclement weather, its subject will be delayed until the following class. Similarly, all tests canceled due to university closure will be delivered during the following class. For information related to weather related class cancellations please call (972) 601-2049.
5. Emergency Exit Procedures - Should we experience an emergency event that requires us to vacate the building, students should exit the room and move toward the nearest exit. When exiting the building during an emergency, one should never take an elevator, but should use the stairwells. Faculty members and instructional staff will assist students in selecting the safest route for evacuation and will make arrangements to assist individuals with disabilities.
6. Campus Carry - Effective August 1, 2016, the Campus Carry law (Senate Bill 11) allows licensed individuals to carry a concealed handgun in buildings on public university campuses, except in locations the University establishes as prohibited. Under the new law, openly carrying handguns is not allowed on college campuses. For more information, visit <http://www.uta.edu/news/info/campus-carry/>.



7. Students with Disabilities - Any student with a documented disability needing academic accommodations is requested to speak with me via Microsoft Teams during the first two weeks of the course. All discussions will remain confidential.
8. Discrimination Policy – The University of Texas at Arlington does not discriminate on the basis of race, color, national origin, religion, age, gender, sexual orientation, disabilities, genetic information, and/or veteran status in its educational programs or activities it operates. For more information, visit [uta.edu/eos](http://uta.edu/eos).
9. Title IX Policy - The University of Texas at Arlington is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in educational programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act). Sexual misconduct is a form of sex discrimination and will not be tolerated. For information regarding Title IX, visit [www.uta.edu/titleIX](http://www.uta.edu/titleIX) or contact the Title IX Coordinator at (817) 272-7091.
10. Student Support Services - The University of Texas at Arlington provides a variety of resources and programs designed to help students develop academic skills, deal with personal situations, and better understand concepts and information related to their courses. These resources include tutoring, major-based learning centers, developmental education, advising and mentoring, personal counseling, and federally funded programs. Among the support services on campus, the IDEAS Center (2nd Floor of Central Library) offers free tutoring to all students with a focus on transfer students, sophomores, veterans and others undergoing a transition to UT Arlington. To schedule an appointment with a peer tutor or mentor email [IDEAS@uta.edu](mailto:IDEAS@uta.edu) or call (817) 272-6593. For more information, students may contact the Maverick Resource Hotline at 817-272-6107 or visit [www.uta.edu/resources](http://www.uta.edu/resources).
11. Emergency Phone Numbers - In case of an on-campus emergency, call the UT Arlington Police Department at 817-272-3003 (non-campus phone), 2-3003 (campus phone). You may also dial 911. The non-emergency number is 817-272-3381.
12. Syllabus Changes – The instructor reserves the right to change the syllabus at any time during the semester.

## Case Briefing Guideline

### **A. Format**

Use the court's terminology if it will help you understand the case or use your own language as if you were trying to explain it to a friend. Both will enhance your understanding of the court's decision.

**Facts:** *A synopsis of the essential facts of the case, i.e., those facts bearing upon or leading up to the issue, in a logical sequence.*

While some cases conveniently state the facts at the beginning of the decision, in other instances the salient facts will have to be culled from their hiding places throughout the text. The facts entry should be a short statement of the events and transactions that led one party to initiate legal proceedings against another in the first place. Do not judge which facts are relevant until you have read over the entire case.

**Issue:** *A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a "yes" or "no" answer.*

In reality, the issue is simply the rule of law put in the form of a question. A concise, single-sentence question will sum up the issue. If a case presents more than one issue, you should express each issue separately.

**Reasoning:** *This is the most important section of your brief. You should note which Justice is the author. Think about the policy and legal issues at stake in the court's decision.*

What are the policy ramifications of the Court's decision to favor one party over another? What rules of law is the Court clarifying? Why is the Court adopting one particular interpretation over other potential interpretations? How does the Court reconcile the present decision with prior case law that has been established? How does the Court distinguish cases that contradict the present decision? Create the links between the Court's interpretation and the decision to favor one party over another. Ultimately, what interpretation of the law does the Court favor and why?

**Holding and decision:** *A succinct explanation of the court's rationale in arriving at its decision. In distilling the reasoning of the court, always include an application of the general rule or rules of law to the specific facts of the case.*

Bring to light in this entry the court's implicit justifications, i.e., the reasons for the state of the law, the Justice's prejudices and biases, the public policies, the things which influence the Justices.

**Source:** Kimi King, University of North Texas